HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

W.P. No.21474 of 2004

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Between:

M/s.Owaisi Medical & Research Centre,
rep. By its Chairman, Sultan Salahuddin Owaisi,
resident of Hyderabad and another ...
Petitioners

and

Mishra Dhatu Nigan Limited and another.
..Respondents

DATE: 12-07-2007

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.21474 OF 2004

ORDER: *(Per Hon'ble Sri Justice B.Prakash Rao)*

Petitioners herein who have been declared as land grabbers filed this Writ Petition *inter alia* seeking for a Writ of Certiorari assailing the orders, dated 13.10.2004, in L.G.C.No.71 of 2002, on the file of the Special Court under A.P.Land Grabbing (Prohibition) Act at Hyderabad allowing an application filed by respondent No.1 herein purporting to be under Section 8 of the said Act to declare the petitioners as land grabbers and consequently seek eviction and for other reliefs.

Heard Sri N.Bharath Babu, the learned counsel who appeared on behalf of the petitioners, and Smt.K.Sesha Rajyam, the learned counsel who appeared on behalf of respondent No.1.

Briefly stated, the facts which gave rise to the present case are that in the aforesaid application filed by respondent No.1 it has been claimed that they are the absolute owners of the schedule property. Further, respondent No.1 is a company under control of the Union of India. The schedule property consisting of Survey No.56/1 to an extent of Ac.7-34

guntas, Survey No.57 to an extent of Ac.6-27 guntas, situated at Kandikal village and also another Survey No.24/1, to an extent of Ac.18-04 guntas, situated at Sultanvala village in Hyderabad was acquired by the Government of Andhra Pradesh for its purpose as long back as on 22.04.1977 under the provisions of the Land Acquisition Act and consequently the possession was given to it on 11.07.1975. Of the said total extent, an extent of

Ac.32-25 guntas in Survey No.24/1, 57 and 56/1 was leased out to its sister concern under the name and style, 'the Defence Research & Development Organization', which is also under the control of the Union of India, Ministry of Defence, for the purpose of construction of a 100 bed hospital for its own employees as per the lease agreement, dated 31.10.1991. Accordingly, the said hospital was constructed. However, an extent of Ac.1-5 guntas out of Ac.7-34 guntas in Survey No.56/1 on the northern side was surrendered back to respondent No.1 and as per the letter, dated 22.05.1992, and the said open land was covered by a boundary wall adjacent to the land of the petitioners. Thus, respondent No.1/the applicant has been in possession and enjoyment of the said land. Further, petitioner No.2 herein sought permission from respondent No.1 by filing an application on 22.02.1994, for holding a function in the said premises of an extent of

Ac.1-5 guntas in Survey No.56/1 of Kandikal village, which was accordingly granted. However, on the night of 5/6.04.1996, the petitioners demolished the boundary wall dividing the land belonging to respondent No.1 and the petitioners towards North-West in Survey No.56/1 which was built by the DRDO and thereby, the petitioners grabbed the land illegally without any right, title and interest whatsoever. In spite of addressing the letter on 15.04.1996 and also the civil proceedings in O.S.No.1454 of 1996,

on the file of the VIII-Additional Junior Civil Judge, City Civil Court, Hyderabad, though which went against initially and an appeal having been filed, where there was no claim of any title by the petitioners herein, they need to be declared as land grabbers and also evicted and compensation be granted. Hence, the application.

Contesting the claim of respondent No.1, in the aforesaid application, apart from the formal denial of the entire allegations as contained in the application, the petitioners' claim is that they have been in possession and occupation since time immemorial and that the said passage was being used by the predecessors in title of petitioner No.1. Further, there is also no access nor any approach road separately except the schedule property and they have been using the same all along without any objection by respondent No.1 and therefore, they are not land grabbers. It is also their case that they have been using the land as such since 1985 in their own right. Further, there has been a decision to transfer the said land to the petitioners and thus, accordingly they are in permissive possession and the application is not maintainable. This counter was initially filed by petitioner No.1, which had been adopted by petitioner No.2 by filing a separate memo.

On these and other allegations as contained in the respective pleadings, the Special Court framed the following issues:

1. *Whether the applicant is the owner of the application schedule property?*
2. *Whether the rival title set up by the respondents is true, valid and binding on the applicant?*

3. *Whether the applicant is entitled for any compensation, if so, to what amount?*
4. *Whether the respondents are land grabbers within the meaning of Act II of 1982?*
5. *Whether the respondents are liable for prosecution under sections 3 to 5 of the Act XII of 1982?*
6. *To what relief?*

Later, both the sides went into trial, during which on behalf of respondent No.1/the applicant, P.W.1 was examined and Exs.A.1 to A.9 were marked. On behalf of petitioners, R.Ws.1 and 2 were examined and Exs.B.1 to B.6 were marked. On an appraisal thereof, the Special Court having found that respondent No.1 had its title and whereas no such case having been made out by the petitioners nor any justification for their occupation, held that the petitioners are the land grabbers and accordingly, allowed the application directing them to vacate the schedule property. Hence, the writ petition.

Though several contentions sought to be urged on merits in asserting the claim in their own right, title and interest and especially the long possession and also the proceedings initiated with the Ministry of Defence for allotting the properties, it was contended that the petitioners cannot possibly be held to be land grabbers. Further, it was also contended that they have been in possession, which is adverse and yet their case was not properly taken into consideration.

The learned counsel appearing on behalf of respondent No.1 in trying to support the ultimate conclusions arrived at by the Special Court sought to reiterate the very same case as set forth in the application before the Special Court and

contended that having regard to the fact that the petitioners have hopelessly failed to make out or establish any valid right or title or any justification for their possession in law, they have been rightly held to be land grabbers and therefore, such finding of facts based on cogent evidence and material would not warrant any interference by this Court.

On the aforementioned contentions and also the other submissions as made across the Bar from both sides, the point which arises for consideration in this appeal is as to whether on the facts and circumstances, the petitioners can be declared as land grabbers.

There is no dispute on the part of the petitioners herein either before the Special Court or before this Court as to the acquisition made by the State Government in respect of the aforesaid lands in Survey Nos.56/1, 57 of Kandikal village and Survey No.24/1 of Sultanvala village under the provisions of the Land Acquisition Act, totaling Ac.32.25 guntas and the award proceedings dated 22.04.1977. There is also no dispute of the fact that respondent No.1/applicant had allowed the construction of 100-bed hospital by the Defence Research and Development Organization, (DRDO) Ministry of Defence, which is sister concern and their occupation being under a lease agreement dated 31.10.1991. It is also not seriously disputed that out of the said extent of Ac.7-34 guntas, an extent of Ac.1-5 guntas in Survey No.56/1 was returned back by the DRDO to respondent No.1, as per the letter dated 22.05.1992. It is also not in dispute even from the allegations as contained in the counter affidavit filed on behalf of the petitioners that they did not set up any title as such in themselves on their own nor tried to trace any such right from any

of their predecessors, if any. There is no reference to any title aspect in any manner whatsoever known to law except pleading that they have been in possession since time immemorial and even otherwise having sought permission from the Ministry of Defence for allotting the same, therefore, their possession cannot be termed as land grabbing. It is also not in dispute that the petitioners did make an application with respondent No.1 as per Ex.A.4 for holding a function. If really the petitioners were to claim any such absolute possession or right or tried to validate their possession by any allotment, there was no necessity for them to seek for such permission to hold any function. Even otherwise, admittedly, in this case no such allotment has been made neither by the State Government or by any other authorities concerned in respect of any portion of the said land in favour of the petitioners though there is reference to the alleged proceedings which have been initiated by the petitioners themselves as can be evident even from the documents filed by themselves in Ex.B.2. Therefore, before going into the merits, the question now is narrowed down to the only aspect as to the justification if any for the petitioners to hold the land as permissible under the law.

On behalf of respondent No.1, P.W.1, who has been examined, gives a complete narration of the entire chequered events since the proceedings of acquisition and also reference to the application made by the petitioners for allotment and which has not been granted. Amongst the documents which have been pressed into service on behalf of respondent No.1, the Special Court sought to place reliance on Ex.A.2 which is an award, dated 22.04.1977, in the aforesaid acquisition proceedings and also Ex.A.3, which is a letter showing the delivery of possession to respondent No.1. Ex.A.4 is the permission which has been

granted by the Chairman, Midhani in favour of the petitioners herein for holding a function of Ifthar. Respondent No.1 also filed the application filed by the petitioners in Ex.A.6 seeking for allotting the land, wherein the petitioners have themselves admitted that the property belongs to respondent No.1. The other documents filed are only in formal i.e. Ex.A.7 the Memorandum of Articles of Association of respondent No.1 and Ex.A.9 is the authorization to pursue the case. Thus, by taking into account and considering the unchallenged version as spoken to by P.W.1 and also the documents which remained totally unattacked in any manner whatsoever as to their genuineness or otherwise, it was held that respondent No.1 has proved its title and also its earlier possession. While coming to the case of the petitioners herein, it is also noted that even in the earlier suit in O.S.No.1454 of 1996 which was a dispute in a Court of law at the first instance, no claim had been made by the petitioners in regard to any title or otherwise as sought to be projected in the present proceedings. Even the version as spoken to by P.W.1 that it is the petitioners who have demolished the boundary wall, having remained unscathed, held that there was compound wall earlier and the same was demolished by the petitioners herein. Coming to the case of the petitioners, it was proceeded on the basis of their own version that except pleading the long possession, no other title having been set up and even the said version having remained wholly unsupported, unproved and unestablished with any cogent evidence, it was held that the petitioners have failed to prove their valid possession or entitlement or any right to hold the property. Therefore, it was held that the petitioners are the land grabbers. These and other findings as given by the Special Court are purely that of fact based on the cogent evidence which has remained

unrebutted by the petitioners. That apart, even the findings as given against the petitioners are well supported by reasons. In view of the same, it is not open for this Court to come to any different conclusions much less there is any warrant to reappreciate the same which itself is not permissible in exercise of extraordinary powers under Article 227 of the Constitution of India. Even otherwise, the petitioners have hopelessly failed to make out prima facie title or interest in the schedule property and nothing valid material has come forward during the course of the enquiry before the Special Court to justify the possession or their alleged earlier possession all along. In view of the same, we are of the opinion that the petitioners have not made out any case to show that the findings are in any way perverse. Except the above, no other plea has been raised on behalf of the petitioners. Hence, we do not find any merits in the writ petition.

The Writ Petition is accordingly dismissed. No costs.

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JUSTICE B.PRAKASH RAO

Date:12.07.2007.

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JUSTICE G.BHAVANI PRASAD

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